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U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20535

July 14, 1999

EX PARTE

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Ex Parte Filing, CC Docket No. 96-115

Dear Ms. Salas:

On behalf of the Association of Directory Publishers ("ADP"), this letter responds to INFONXX's filings of June 29 and July 1, 1999, urging the Commission to delay determining whether Internet directories are "directories in any format" within the meaning of Section 222(e) of the Telecommunications Act of 1996. ADP respectfully submits that the Commission should not delay this determination by including it in a further notice calculated to address directory assistance issues.

The issue of Internet directories is ripe for decision.¹ The Administrative Procedure Act ("APA") requires that the adoption of a rule be preceded by notice and an opportunity to comment on "either the terms or substance of [a] proposed rule or a description of the subjects and issues involved."² The Commission has recognized that this notice requirement is satisfied where the final rule is a "logical outgrowth" of the rulemaking proposal.³ Moreover, notice has been held to be

¹ INFONXX incorrectly claims that "the record in this proceeding has focused on printed publishers." INFONXX *Ex Parte* Filing of July 1, 1999, at 2. As shown below, this is not the case.

² 5 U.S.C. § 553(b)(3).

³ In Re Amendment of Parts 21 and 74 to Enable MDS and ITFS Licensees to Engage in Fixed Two-Way Transmissions, Report and Order, 13 FCC Rcd. 19112, at ¶ 62 (1998) ("Two-Way Order"); see also Aeronautical Radio, Inc. v. FCC, 928 F.2d 428, 445-46 (D.C. Cir. 1991).

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sufficient where the description of the "subjects and issues involved" affords interested parties a reasonable opportunity to participate in the rulemaking.⁴

The May 17, 1996, Notice of Proposed Rulemaking ("Notice") initiating this proceeding broadly sought comment on "regulations that interpret and specify in more detail a telecommunications carrier's obligations under subsections 222(c) - (f) of the 1996 Act"⁵ and, specifically, on "what regulations and procedures may be necessary" to implement Section 222(e).⁶ In addition, the Notice sought comment on the safeguards necessary "to ensure that a person seeking subscriber list information is doing so for the specific purpose of 'publishing directories in any format.'"⁷ Whether the publication of an Internet directory is "publishing directories in any format" and is covered by Section 222(e) is directly related to the "subject and issues" in this rulemaking.⁸ Thus, a confirmation that listings may be used for the publication of Internet directories is a "logical outgrowth" of the issues raised in the Notice and clearly within the scope this rulemaking.

Several parties, including ADP and the Yellow Pages Publishers Association ("YPPA"), have commented on this issue during this proceeding.⁹ For example, in its Reply Comments in this proceeding, filed on June 26, 1996, ADP proposed rules defining subscriber list information to encompass electronic and optical formats. In its September 18 and December 30, 1997, *ex parte* filings, ADP pointed out that by its terms, BellSouth's directory publication tariff does not encompass the sale of listings for use in an Internet directory and BellSouth does not permit listings sold under this tariff to be used in Internet directories. ADP further explained that BellSouth only permits publishers

⁴ Two-Way Order, 13 FCC Rcd. 19122, at ¶ 62; see also Transpacific Freight Conference v. Federal Maritime Commission, 650 F.2d 1235, 1248 (D.C. Cir. 1980).

⁵ Notice at ¶ 2.

⁶ Id. at ¶ 45.

⁷ Id. at ¶ 46.

⁸ The plain language of Section 222(e) -- "publishing directories in any format" - encompasses Internet directories. Indeed, it is clear that this language was included in Section 222(e) by Congress specifically to address directories in optical or electronic formats.

⁹ See, e.g., ADP Ex Parte Filings of September 18, 1997; October 8, 1997; December 16, 1997; December 30, 1997; April 2, 1998; see also YPPA Ex Parte Filing of December 4, 1997.

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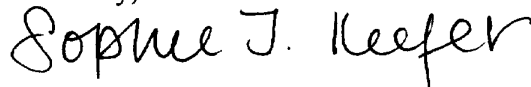
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to purchase listings for an Internet directory pursuant to its directory assistance tariff, at a charge of 3.5 cents per customer request. In its *ex parte* filing of April 2, 1998, ADP reported that Cincinnati Bell was charging \$1.15 per listing for use of its listings in an Internet directory, which was 25 cents higher than the charge for use of the listings in a printed directory.

Nevertheless, INFONXX requests that the Commission decline to rule on the issue of Internet directories until it has addressed directory assistance issues under Section 222(e). ADP does not comment on the substance of INFONXX's claim that the Commission should define "publisher" to include directory assistance operators. However, ADP urges the Commission to resolve the issue of access to SLI for the purpose of publishing Internet directories, which has been ripe for decision since the close of the comment period in this proceeding in June 1996, before seeking comment on directory assistance issues, which were raised for the first time in February of this year.

Pursuant to the Commission's rules, an original and one (1) of this letter are being filed. Should you have any questions, please do not hesitate to contact the undersigned at (202) 429-4730.

Sincerely,



Sophie J. Keefer

cc: Dorothy Attwood
William J. Bailey
Kyle D. Dixon
William A. Kehoe, III
Linda Kinney
Daniel R. Shiman
Lawrence A. Strickling
Sarah Whitesell